

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

WONSLEY PLAZA, LLC
Plaintiff,

v.

NATIONWIDE GENERAL
INSURANCE COMPANY
Defendant.

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CIVIL ACTION NO. 1:23-cv-00479-RP

PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT AGREEMENT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **WONSLEY PLAZA, LLC**, Plaintiff in the above-captioned styled and captioned matter and files this his Motion to Enforce Settlement Agreement and in support thereof would respectfully show the following:

BACKGROUND

1. This is a case wherein Plaintiff, Wonsley Plaza, LLC, filed a claim with its insurance company, Defendant, Nationwide General Insurance Company, for damage to the property following a windstorm. Plaintiff alleged that Defendant failed to properly investigate and evaluate the property damage claimed and, therefore, undervalued and/or omitted the damages claimed.

2. On December 14, 2023, mediation was held in this matter. As a result of the mediation, a mediator's proposal was circulated amongst the parties (see Exhibit 1 attached hereto). The mediator's proposal was subsequently signed by the parties on or about December 20, 2023.

3. The terms of the settlement agreement set out in the mediator's proposal are as follows:

- i. Defendant pays Plaintiff \$207,500 ("Settlement Payment") within 20 days of Plaintiffs execution of a confidential release and settlement agreement pursuant to which Plaintiff will fully release all claims that have been or that could have been asserted under the policy or in this lawsuit. The settlement agreement will include standard confidentiality and indemnity agreements, pursuant to which Plaintiff will keep the settlement agreement and terms confidential and will defend, indemnify, and hold Defendant harmless for any claims made by, through or under Plaintiff; and
- ii. Plaintiff will non-suit all claims against Defendant with prejudice with each party to bear its own costs and fees.

4.. On January 4, 2024, Defendant informed Plaintiff that it would not be able to release payment of the settlement funds to Plaintiff without including Plaintiff's mortgage company and the public adjuster Plaintiff had hired in this case. In response, Plaintiff forwarded an email from its public adjuster releasing any interest he had in connection with the settlement funds. However, Defendant again asserted it could not agree to a settlement check split and would issue the settlement payment made payable to all proposed payees. At the time of the settlement, there was never any mention and/or agreement that the additional entities would be included in the distribution of the settlement funds.

5. The terms of the settlement clearly state "Defendant pays Plaintiff \$207,500 ("Settlement Payment") within 20 days of Plaintiffs execution of a confidential release and settlement agreement pursuant to which Plaintiff will fully release all claims that have been or that could have been asserted under the policy or in this lawsuit."

6. The terms of the settlement are clear and as such, the release of the settlement funds are overdue.

PRAYER

Plaintiff's pray that this Court order Defendant to forward said settlement funds, as well as the Release, to Plaintiff by and through its attorney of record within three (3) days of the signing of the Order.

Respectfully submitted,

CARRIGAN & ANDERSON, PLLC

/s/David M. Anderson

David M. Anderson

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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

Counsel for Plaintiff and Defendant have conferred and are unable to reach an agreement as to this Motion and the relief requested.

/s/ David M. Anderson

David M. Anderson

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure on this the 19th day of January, 2024.

/s/ David M. Anderson

David M. Anderson